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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,484	03/30/2001	Jay H. Connelly	42390P10858	5737

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

TRAN, HAI V

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/823,484	Applicant(s) CONNELLY, JAY H.	
	Examiner Hai Tran	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10/10/2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-36.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


HAI TRAN
PRIMARY EXAMINER

Response to Arguments

Applicant argues (page 14), "Applicant respectfully submits that the content provider in the viewer response system, as taught by Seidman, is a single content provide having various video and audio streams, which may be concurrently provided as a multiplex for navigation thereof by a user (see, Col. 5, lines 3-5). Applicant further goes on to argues, (page 15, 2nd paragraph), "... In fact, Applicant respectfully submits that the Examiner fails to consider the term service provider system and broadcast service system, as recited by claims 1, 15, and 21."

In response, the Examiner respectfully disagrees with Applicant because Seidman clearly shows sending files from a broadcast service system, or broadcast data (Col. 5, lines; Col. 5, lines 57-60; Col. 6, lines 4-6; Col. Col. 10, lines 58-67, broadcast system, i.e., headend). Seidman also shows transmitting additional "data", such as hyperlinks, embedded data, and metadata, as defined for example, text files, computer programs pointers, see Col. 5, lines 15-22; Col. 7. lines 34-39; and Col. 8, lines 15-35, in which One Ordinary Skill in the art would understand that at least "hyperlink" is provided from the Internet Service Provider. Although this "data" may be provided by the same headend, this "data" clearly different and is provided by a different source, i.e., ISP or server, which constitutes a service provider system. In fact, there is nothing in the claim preclude the "broadcast service system" and the "service provider system" to be a part

of the same overall headend system. Hence, a broadcast service system is most certainly a service provider system and vice versa.

Applicant further argues (page 17, 2nd paragraph), "As indicated by the cited passage above, the recording apparatus records a received program in memory if the program corresponds strongly to a user profile indicative of programs which have been displayed by the television 101. Applicant respectfully submits that such passage refers to the recording of received programs hence, provides no teaching or suggestions with regard to the broadcasting of such programs, as recited by claims 1, 15 and 25."

In response, the Examiner respectfully disagrees and confuses because, as admitted by Applicant, the recording apparatus records a "received program" in memory; therefore, the "received program" is indeed broadcasted. Otherwise the recording apparatus could not record the receiving program, as disclosed!

Applicant further argues, "the modification of Seidman to include such functionality would render Seidman unsatisfactory for its intended purpose of enabling a user to navigate concurrently transmitted audio and video stream to select a combination thereof and receive a customized digital stream..."

In response, quite contrary to Applicant's argument, the modification of Seidman with the teaching of Brown would NOT render Seidman unsatisfactory for its intended purpose because first of all, Both Seidman and Brown are in the field of endeavor, i.e.,


TV distribution system. Secondly, Both Seidman and Brown relates to the generation/use of user profile for the creation and transmission of "personalized" program to the user based on user profile (see Seidman – Summary of the invention; Col 3, lines 10-55) and for selecting products and services on the basis of generated user profile data. (see brown- Summary of the invention; Col. 2, lines 25-Col. 3, lines 30). Therefore, the combination of Seidman in view of Brown would not render Seidman unsatisfactory for its intended purpose, as alleged by applicant, because it would not prohibiting the user from receiving customized digital data, since the content of the customized digital data is dynamically tailored according to user profile and the content would be part of the receiving multimedia stream. The combination would further enhance the user experience of using the system by providing user additional features, such as to record at least one TV program on the user receiver according to user profile so that the user has the choice of viewing it at a later time. Consequently, the Examiner contends that the combination Seidman in view of Brown has every reasonable expectation of success in achieving the claimed invention.

As to the rest of dependent claims, Applicant mainly argues around the combination of Seidman in view of Brown; therefore, as above discussion, the Examiner asserts that the combination of Seidman in view of Brown and further in view of Ten Kate; Seidman in view of Brown and further in view of Ballou; and Seidman in view of Brown and further in view of Ten Kate and further in view of Ballou; Seidman in view of Brown and

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further in view of Barton; and Seidman in view of Brown and further in view of Ali are all proper.

As such the Examiner maintain the rejection.



HAI TRAN
PRIMARY EXAMINER